Looking back, the information which the plaintiff had sought from the fifth defendant was really an attempt to verify the defence advanced by the first to the fourth defendants of discharge by payment of the purchase price in accordance with the option as to the mode of payment of the price for the shares provided for in the agreements. The onus of establishing a defence of discharge by payment would clearly lie on the first to the fourth defendants, and it will therefore be for them to properly substantiate that defence by adducing the necessary contemporary documentary evidence. The Annexure K borrower companies into whose account with the fifth defendant, the first to the fourth defendants claimed to have made the payments, are all companies controlled by the plaintiff, and it is difficult to see why these companies may not authorise disclosure of the required information notwithstanding s. 97 of the Banking and Financial Institutions Act.

A final point needs to be made and it is this: a *Norwich Pharmacal* order being an equitable remedy will not be granted as of right even when the requirements for it are satisfied and, so, the Court has a discretion as to whether to grant or refuse it.

It follows that the fifth defendant having succeeded on his primary ground of appeal, it is unnecessary for us to delve into the other grounds of appeal.

In the result, we allowed the appeal and reversed the order of the learned Judge refusing to strike out the plaintiff's claim against the fifth defendant in respect of para 17A(1) of the statement of claim. It follows that the action, insofar as it involved the fifth defendant, was struck out. We also ordered costs here and below to the fifth defendant and refund of the deposit paid into Court by way of security for costs.

KUMPULAN SUA BETONG SDN. BHD.

v.

EZAN SDN. BHD. & ANOR.

SUPREME COURT, IPOH
TUN DATO' SERI ABDUL HAMID BIN OMAR LP, TAN SRI DATO' MOHD. EUSOFF BIN CHIN, DATUK MOHAMED DZAIDDIN BIN HJ. ABDULLAH SCJJ
[SUPREME COURT CIVIL APPEAL NO. 02-49-92]
10 JUNE 1993

LAND LAW: Sale and purchase of estate land - Sale and purchase agreement conditional upon approval of Estate Land Board - Approval not obtained - Land registered in name of purchaser - Vendor disputing transfer of land to purchaser - Whether approval of Estate Land Board required.

INTERPRETATION OF STATUTES: National Land Code 1965 s. 214A - Sale and purchase of estate land - Whether approval of Estate Land Board required - Sub-section creating penal offence - Introductory words to sub-section - Clear and plain meaning of words - Strict construction of words.

The appellant and the first respondent entered into a sale and purchase agreement for the sale of a portion of the Port Dickson-Lukut Estate, known as Lot 849, of which the appellant was the owner. Pursuant to one of the clauses of the agreement, the first respondent nominated the second respondent as the purchaser of Lot 849 which was consented to by the appellant. The second respondent paid the purchase price and Lot 849 was transferred and registered into the name of the second respondent.

About seven years after the execution of the agreement the appellant objected to the transfer of the land to the second respondent on the ground that no approval from the Estate Land Board for such transfer had been obtained contrary to the provisions of s. 214A of the National Land Code 1965 (NLC 1965).

Held:

[1] The requirement of the approval of the Estate Land Board was to be found in subsection (4) of s. 214A of the NLC 1965 which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any

manner whatsoever of the estate land is made to two or more persons. Where an estate land or a portion of an estate land is to be transferred to one person, as in this case, the Estate Land Board's approval was not required.

[2] Sub-section (10A)(b) of s. 214A NLC 1965 only applied for purposes of proof of any offence in any prosecution under sub-section (10A)(a). The provision in sub-section (10A)(b) cannot and should not be stretched to supplement the precise words used by Parliament in sub-sections (1) and (4) of s. 214A NLC 1965.

[Appeal dismissed with costs. Private caveat filed by appellant on Lot 849 ordered to be removed].

[**Bahasa Malaysia** Translation of Headnote]

UNDANG-UNDANG TANAH: Jual-Beli tanah ladang/estet - Perjanjian jual-beli tertakluk kepada syarat kelulusan Lembaga Tanah Ladang - Kelulusan tidak diperolehi - Tanah didaftarkan dalam nama pembeli - Penjual mempertikaikan pindahmilik tanah kepada pembeli - Sama ada kelulusan Lembaga Tanah Ladang diperlukan.

TAFSIRAN STATUT-STATUT: Kanun Tanah Negara 1965 s. 214A - Jual-beli tanah ladang - Sama ada kelulusan Lembaga Tanah Ladang diperlukan - Subseksyen membentuk kesalahan penal - Kata-kata pengenalan kepada subseksyen - Maksud kata-kata yang jelas dan nyata - Pentafsiran ketat akan kata-kata.

Perayu dan responden telah memasuki perjanjian jual-beli untuk penjualan sebahagian daripada Estet Port Dickson-Lukut, yang dikenali sebagai Lot 849, di mana perayu merupakan pemiliknya. Menurut salah satu daripada fasal-fasal dalam perjanjian tersebut, responden pertama telah menamakan responden kedua sebagai pembeli Lot 849 yang mana ini dipersetujui oleh perayu. Responden kedua membayar harga belian dan Lot 849 telah dipindahmilik dan didaftarkan ke dalam nama responden kedua.

Kira-kira tujuh tahun selepas pejanjian tersebut ditandatangani, perayu membantah kepada pindahmilik tanah berkenaan kepada responden kedua atas alasan bahawa tiada kelulusan diperolehi daripada Lembaga Tanah Ladang untuk pindahmilik sedemikian dan ini adalah bertentangan kepada syarat-syarat s. 214A, Kanun Tanah Negara 1965 (KTN 1965).

Diputuskan:

[1] Keperluan mendapatkan kelulusan Lembaga Tanah Ladang adalah didapati dalam subseksyen (4) akan s. 214A KTN 1965 yang mana dalam kata-kata yang jelas dan nyata menyebutkan bahawa permohonan untuk kelulusan hanya diperlukan apabila pindahmilik, pindah hak atau pelupusan dalam apa cara jua akan tanah ladang dibuat kepada dua orang atau lebih. Apabila sesuatu tanah ladang atau sebahagian daripada tanah ladang hendak dipindahmilik kepada seorang sahaja, seperti dalam kes ini, kelulusan Lembaga Tanah Ladang tidak diperlukan.

[2] Subsekyen (10A)(b) dalam s. 214A KTN 1965 hanya terpakai untuk tujuan-tujuan sebarang kesalahan dalam mana-mana dakwaan di bawah subseksyen (10A)(a). Syarat-syarat dalam subseksyen (10A)(a) tidak boleh dan tidak harus diluaskan untuk menambah kata-kata tepat yang digunakan oleh Parlimen dalam subseksyen (1) dan (4) akan s. 214A KTN 1965.

[Rayuan ditolak dengan kos. Kaveat persendirian yang difailkan oleh perayu ke atas Lot 849 diperintahkan supaya dikeluarkan].

Legislation referred to:
National Land Code 1965, s. 214A

For the appellant - Haji Sulaiman b. Abdullah (K. Thavakumar with him); M/s. Zain & Co.
For the respondents - Siew Yew Ming; M/s. Soo Thien Ming & Shahrizat

JUDGMENT

Mohd. Eusoff Bin Chin SCJ:

The appellant was the owner of Port Dickson-Lukut Estate (hereinafter referred to as the Estate). By a written sale and purchase agreement dated 20 March 1980, the appellant agreed to sell a portion of the Estate to the first respondent. This portion is now known as Grant No. 4125, Lot 849 Mukim of Port Dickson, (hereinafter Lot 849) having an area (after acquisition of a portion of it by the Government) of approximately 139.5 acres. The estate is divided into 4 Divisions, and Lot 849 is in the Lukut Division. Lot 849 is contiguous to Lots 1516, 1517 and 1518 in the Lukut Division. Lot 849 was planted with palm oil and rubber.

Clauses 4 and 5 of the agreement stated -

> 4. This Agreement is conditional upon the approval of the Estate Land Board to the sale of the said land to the purchaser. The parties hereto shall use their best endeavours to obtain such consent and if such approval and consent are not given or obtained before the completion date hereinafter referred to then and in that event the Vendor shall refund to the Purchaser the deposit referred to in clause 2(a) and thereupon this agreement shall be null and void and cease to have any force or effect and neither party shall have any claim against the other in respect thereof. The parties hereto shall **within 21 days** from the date hereof submit a **joint application** to the Estate Land Board for such approval as aforesaid.
>
> 5. Subject to clauses 2 and 4 hereof, the Vendor shall within two (2) weeks of the completion date hand over to the Purchaser the relevant document of title to the said land and a valid and registrable Memorandum of Transfer thereof in favour of the Purchaser or **its nominee** or nominees and shall let the Purchaser into possession of the said land.
>
> (emphasis added).

On 14 April 1981 pursuant to clause 5 of the agreement, by a deed of assignment, the first respondent nominated the second respondent as the purchaser of Lot 849. This deed of assignment was acknowledged and consented to by the appellant on 22 September 1981 (see Exh. P4).

On 22 September 1981, the second respondent having paid the purchase price of RM844,800 Lot 849 was transferred and registered into the name of the second respondent.

The second respondent then applied and obtained approval from the State Authority of Negeri Sembilan for sub-division, and changing the category of land use from agriculture to dwelling and shop houses. The letter from the State Executive Council produced as Exh. D13 states -

> Ruj. Kami : (94) dlm. SUKNS 200 (03) 389/1 Klt. 2
> Tarikh : 14 Julai 1986.
>
> Kepada:
>
> Dataran Segar Sendirian Berhad,
> Lot, 46/381 & 47/381, Wisma Reka,
> Taman Bukit Labu, Seremban,
> Negeri Sembilan.
>
> Tuan,
>
> Per: Permohonan daripada Dataran Segar Sendirian Berhad untuk **memecahkan sempadan** tanah lot 849, Geran 4125 Mukim Port Dickson seluas 83.77 hektar (207) ekar dan **menukar syarat** lot-lot tanah yang telah dipecah sempadan daripada 'tiada' (pertanian) kepada bangunan kediaman dan bangunan perniagaan dibawah Seksyen 124A Kanun Tanah Negara. (Kertas mesyuarat No: 638/86
>
> (emphasis added)
>
> Adalah saya diarah dengan hormatnya memaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 25 Jun 1986 yang lepas telah meluluskan permohonan tuan itu.
>
> 2. Syarat-syarat kelulusan itu akan disampaikan kepada tuan oleh Pejabat yang berkenaan dengan secepat mungkin.
>
> Sekianlah dimaklumkan, adanya.
>
> Saya yang menurut perintah,
>
> t.t.
> (Mohd. Dahan Bin Abdollah)
> Setiausaha
> Majlis Mesyuarat Kerajaan,
> Negeri Sembilan.

(Translation)

> Our Ref : (94) dlm. SUKNS 200 (03) 389/1 Klt.2
> Date : 14 July 1986.
>
> To:
>
> Dataran Segar Sendirian Berhad,
> Lot, 46/381 & 47/381, Wisma Reka,
> Taman Bukit Labu, Seremban,
> Negeri Sembilan.
>
> Sir,
>
> Subject: Application from Dataran Segar Sendirian Berhad for **sub-division** of lot 849 Grant 4125 Mukim Port Dickson, 83.77 hectres (207) acres in area and **changing** the category of land-use of the lots after sub-division from blank (agriculture) to dwelling house and commercial building under s. 124A of the National Land Code (Meeting Paper No: 638/86)
>
> (emphasis added)

I have the honour to inform you that the State Executive Council which met on 25 June 1986 had approved your application.

The terms and conditions of approval will be sent to you by the relevant Departments as soon as possible. That is all I wish to inform you.

Yours obediently,
sgd:
Secretary
Executive Council
Negeri Sembilan.

Earlier to that the Land Office Port Dickson had written a letter to the second respondent thus -

Ruj Kami : (35) dlm. PTPD. 528/115/85/04
Tarikh : 24 April 1986.

Tetuan Dataran Segar Sdn. Bhd.,
No. 31, Jalan SS 15/2A,
Subang Jaya,
47500 - Selangor.

Tuan,

Cadangan Untuk Membangunkan Pekan Baru Port Dickson.

Adalah saya dengan hurmatnya merujuk kepada perkara yang tersebut diatas, sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 22 Januari 1986, dan mengambil keputusan bersetuju pada dasarnya cadangan konsep yang tuan kemukakan untuk membangunkan kawasan lot 849, Mukim Port Dickson seluas lebih kurang 157 ekar.

2. Disamping itu Majlis Mesyuarat Kerajaan telah juga memutuskan seperti berikut:

i. Pekan Baru yang dicadangkan untuk dibangunkan itu ditukar namanya kepada Pekan Baru Lukut.
ii. Pihak syarikat yang berkenaan tidak dibenar untuk membangunkan sebarang tapak perusahaan dikawasan pekan baru ini.
iii. Syarikat yang berkenaan adalah bertanggungjawab untuk menempatkan semula Kuil Hindu dan juga lebih kurang 47 keluarga yang terlibat dengan projek pembangunan pekan baru ini dengan membayar ganti-rugi sebanyak RM20,000 kepada tiap-tiap satu keluarga.

Sekian dimaklumkan dan terima kasih.

'Berkhidmat Untuk Negara'

Saya yang menurut perintah,
t.t.
(Baba Bin Hasan)
b/p Pentadbir Tanah Daerah,
Port Dickson

(Translation)

Our Ref : (35) dlm. PTPD. 528/115/85/04
Date : 24 April 1986.

Tetuan Dataran Segar Sdn. Bhd.,
No. 31, Jalan SS 15/2A,
Subang Jaya,
47500 Selangor.

Sir,

Proposal For Development Of Pekan Baru Port Dickson

I have the honour to refer to the above mentioned subject and am glad to inform you that the State Executive Council on 22 January 1986, had made a policy decision to approve your proposed development of lot 849, Mukim Port Dickson which is about 157 acres in area.

2. The State Executive Council also decided that -

(i) The proposed Pekan Baru (New Town) should be named Pekan Baru Lukut.
(ii) The company concerned is not allowed to develop in the new township, any industrial site.
(iii) The company concerned shall be responsible to relocate the Indian temple and about 47 families affected by this development project by paying to each family a compensation of RM20,000.

Thank you.

'Service For The Nation'

Yours obediently,
Sgd:
(Baba Bin Hasan)
for District Land Administrator,
Port Dickson.

Then on 3 February 1987, about 7 years after the agreement dated 20 March 1980, the second respondent received a letter from the appellant objecting to the transfer of the land to the second respondent on the ground that no approval from the Estate Land Board for such transfer had been obtained.

On 11 June 1987, the appellant filed a writ in the High Court, for the following orders -

(a) A declaration that the registration of the transfer of the said land to the second defendant without the prior consent of the Estate Land Board was null and void;

(b) An order that the register of titles be rectified by the reinstatement of the plaintiff as proprietor of the said land in place of the second defendant and on such rectification all monies that have been paid to the plaintiff be refunded to the first defendant;
(c) If necessary an order that the first and second defendants do cause a retransfer of the said land to the plaintiff;
(d) costs;

The main ground of appeal is that the land was transferred contrary to the provisions of s. 214A of the National Land Code. For ease of reference we quote s. 214A here -

Control of transfer of estate land

214A. (1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred **to two or more persons** unless approval of such transfer by the Estate Land Board (hereinafter referred to as "the Board") established under sub-section (3) has been obtained.

(2) The Registrar **shall not register** any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board

(3) For the purpose of this section there shall be established an Estate Land Board consisting of -

(a) the State Secretary, who shall be the Chairman; and
(b) not more than four members appointed by the State Authority from amongst members of the Public Service.

(4) The proprietor or any co-proprietor of any estate land desiring to transfer such land **to two or more persons** and the intending transferees **shall jointly submit** an application to the Board in Form 13C.

(5) The Board may approve an application made under sub-section (4) and shall have power to refuse or cancel an approval of any such application if -

(a) it is satisfied that any statement or representation made in the application is false or incorrect; or
(b) it is satisfied that the applicant fails or refuses to comply with any direction given or restrictions or conditions imposed by it; or
(c) it appears to it that the approval of the application will not be in the public interest.

(6) Decision of the Board shall be by majority of votes; and in the case of equality of votes the Chairman shall have a casting vote.

(7) Before making any decision the Board may as it thinks fit call any person to give any statement before it or produce any document to be examined by it.

(8) Where approval of an application under sub-section (4) is refused or cancelled by the Board, the applicant may, within 30 days after the communication to him of the Board's decision of such refusal or cancellation, appeal in writing to the State Authority.

(9) The State Authority may confirm or reverse the decision of the Board:

Provided that where the decisions of the Board is reversed by the State Authority, the State Authority may give such direction or impose such restriction or condition as it may think fit.

(10) Any person who obtains or attempts to obtain approval of the Board by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application

or representation, whether in writing or otherwise or who fails or refuses to comply with any direction, restriction or condition imposed on him shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM10,000 and where the offence is a continuing one shall be further liable to a fine of not exceeding RM1,000 in respect of each day the offence is committed.

(10A)(a) **Any person who transfers**, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in **contravention of subsection (1)**, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to fine not exceeding ten thousand ringgit.

(b) **For the purpose of this subsection,** the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land **to one or more persons,** without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of subsection (1); and any act to demarcate an estate land or to cause or **permit the demarcation** of an estate land otherwise than in accordance with the provisions of this Act shall be *prima facie* proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of subsection (1).

(11) For the purpose of this section 'estate land' means any agricultural land held under one or more than one title, the area or the aggregate area of which is not less than 500 acres and the lots constituting such area are contiguous.

(Note : In 1984, the words '500 acres' were amended to read "40 hectares".)

Two years after filing the Writ the appellant filed a private caveat on lot 849 on 8 November 1989. The second respondent then filed an application *vide* Originating Summons S6-25-2-90 to remove the caveat. The High Court allowed the application. However, on appeal the Supreme Court restored this caveat pending the outcome of the appellant's substantive application for declaration that the transfer of Lot 849 to the second respondent was void.

It is not disputed that Lot 849 was a part of an 'estate land' as defined in sub-section (11) of s. 214A of the National Land Code. It is also not disputed that in spite of clause 4 of the agreement and the provision of s. 214A(4) of the National Land Code, no application for the approval of the transfer was made to the Estate Land Board by the appellant jointly with the second respondent. It could be that both parties would have made the joint application for the approval of the transfer if the Land Registrar had asked them to do so because the Registrar has a duty under sub-section (2) of s. 214A of the National Land Code to examine an instrument of transfer and if he finds that the transfer is subject to approval of the Estate Land Board, and no certificate was enclosed, he would have rejected the transfer. In this case the Registrar must have found that the land could be transferred without the approval of the Board. The question is whether the approval of the Estate Land Board is required in this particular case.

We are of the view that reading sub-sections (1) and (4) of s. 214A, it appears that an application is not required to be submitted to the Estate Land Board at all. We are of this view because sub-section (1) of s. 214A specifically states that no estate land can be transferred to two or more persons without the approval of the Estate Land Board, and sub-section (4) of s. 214A makes it mandatory for an application to be submitted for approval of the Estate Land Board if the estate land is to be transferred to two or more persons.

Our attention was drawn by the learned Counsel for the appellant to sub-section (10A)(b) of

s. 214A of the National Land Code. We find that this sub-section (10A) was inserted by Act A124 effective from 21 October 1969. Sub-section (10A)(a) created an offence which is committed by a proprietor of an estate land if he contravenes the provision of sub-section (1) of s. 214A. Sub-section (10A)(b), however, creates **a presumption** that if a proprietor of an estate land executes an agreement to convey or dispose the estate land to two or more persons, or to convey or dispose any portion or portions of the estate land to one or more persons without the approval of the Estate Land Board, **he commits the offence** under sub-section (10A)(a) of s. 214A. We have come to this conclusion because of the clear introductory words used by Parliament in enacting this sub-section (10A)(b) which are: For the purposes of this sub-section ...", which means, For the purposes of sub-section (10A) only", which in turn means for the purposes of proof of any offence in any prosecution under sub-section (10A)(a). The provision in sub-section (10A)(b) therefore cannot and should not be stretched to supplement the precise words used by Parliament in sub-sections (1) and (4) of s. 214A. While we quite appreciate that the object of s. 214A is to discourage the fragmentation of estate lands we are reminded that the Court's function is to interpret, not to make law. We are also quite aware of the consequence that if an estate land is transferred to two or more persons an estate land is fragmented into two or more portions. But we are here dealing with the requirement of an approval of the Estate Land Board. That provision is to be found in sub-section (4) of s. 214A which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to **two or more** persons. In other words, where an estate land or only a portion of an estate land is to be transferred to one person, the Estate Land Board's approval is not required. If, therefore, there is any *lacuna* in the law, it must be corrected through legislative means.

We, therefore, dismiss this appeal with costs.

Consequently, we made the Order that the private caveat filed by the appellant on Lot 849 which is the subject of Kuala Lumpur High Court Originating Summons S6-25-2-90 must also be forthwith removed and we so order. Since this Court had held earlier that the caveat had been properly entered by the appellant, no damages should be allowed on account of the caveat, we hereby set aside the order made by the learned High Court Judge that assessment of damages be made in favour of the respondent.